

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUDY TUCKER, #207829,

Petitioner,

Civil Action No. 99-CV-72263

vs.

HON. BERNARD A. FRIEDMAN

DEWAYNE BURTON,

Respondent.

_____ /

**ORDER TRANSFERRING PETITIONER'S MOTION FOR RELIEF FROM
JUDGMENT TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

This matter is before the Court on petitioner's motion for relief from judgment under Fed. R. Civ. P. 60(b) [docket entry 71]. In the instant motion, petitioner seeks relief from the Court's December 20, 1999, order of dismissal, issued almost twenty years ago. This is petitioner's sixth motion for relief from judgment.

In May 1999, petitioner filed an application for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 1990 state court convictions for first degree murder and possession of a firearm during the commission of a felony. In December 1999, the Court dismissed the habeas petition as untimely under 28 U.S.C. § 2244(d). The Court's dismissal of the petition was affirmed by the Sixth Circuit in February 2002, *see Tucker v. Stine*, 31 F. App'x 184 (6th Cir. 2002) (unpublished), and the United States Supreme Court denied petitioner's subsequent petition for a writ of certiorari in October 2002. *See Tucker v. Stine*, 537 U.S. 833 (2002).

In December 2008, the Court denied petitioner's motion for relief from judgment under Fed. R. Civ. P. 60(b). In August 2014, the Court denied petitioner's second motion for relief from judgment under Fed. R. Civ. P. 60(b). In September 2014, the Court denied petitioner's

motion for reconsideration and request for a certificate of appealability. Petitioner's request for a certificate of appealability was denied by the Sixth Circuit in February 2015, *see Tucker v. Burton*, No. 14-2179 (6th Cir. Feb. 24, 2015), and in October 2015, the United States Supreme Court denied petitioner's petition for a writ of certiorari. *See Tucker v. Bauman*, 136 S. Ct. 46 (2015). In November 2017, the Court denied three more motions for relief from judgment filed by petitioner.

Having reviewed petitioner's most recent motion for relief from judgment, the Court finds that this motion appears to be an unauthorized second or successive habeas petition because "it 'seeks vindication of' or 'advances' one or more 'claims.'" *Franklin v. Jenkins*, 839 F.3d 465, 473 (6th Cir. 2016) (quoting *Post v. Bradshaw*, 422 F.3d 419, 424 (6th Cir. 2005)). The Court is required to transfer unauthorized second or successive habeas petitions to the United States Court of Appeals for the Sixth Circuit. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). Accordingly,

IT IS ORDERED that petitioner's motion for relief from judgment under Fed. R. Civ. P. 60(b) [docket entry 71] is transferred to the United States Court of Appeals for the Sixth Circuit.

Dated: April 11, 2019
Detroit, Michigan

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first-class U.S. mail on April 11, 2019.

s/Johnetta M. Curry-Williams

Case Manager

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